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MASTER OF MILITARY STUDIES

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**THE 21<sup>ST</sup> CENTURY FBI: A DOMESTIC NATIONAL SECURITY MISSION UNDER  
THE RULE OF LAW**

SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF MILITARY STUDIES

**FBI SUPERVISORY SPECIAL AGENT TIMOTHY T. BURKE**

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Date: 8 March 2011

## EXECUTIVE SUMMARY

**Title:** The 21st Century FBI: A Domestic National Security Mission Under The Rule of Law

**Author:** SSA Timothy T. Burke, FBI, CG-14

**Thesis:** Rather than transform itself into a domestic intelligence agency, the FBI is capable of successfully continuing its national security mission by focusing on violators of federal law and traditional investigative techniques while remaining true to the constitutional limits of a law enforcement approach.

**Discussion:** Throughout its history, the FBI has honorably served the American public by bringing many of the nation's most notorious criminals to justice. The dedicated efforts by generations of Special Agents have secured the prosecutions of corrupt public officials, Nazi saboteurs, gangsters, mob chiefs, fraudsters, cyber criminals, civil rights violators, and terrorists, while adhering to the rule of law and protecting civil liberties. Along the way, the FBI has earned a reputation for excellence and professionalism in the law enforcement community. It has also played a significant role in the national security arena, periodically drawing criticisms from lawmakers, constitutional scholars, judges, and law-abiding citizens concerned over breeches to civil liberties in the name of national security.

Nine years after the devastating attacks of 9/11, the FBI has reconstituted its resources and become an intelligence-driven organization with counterterrorism as its number one mission priority. The hybrid nature of the terrorism problem, (both criminal and national security oriented), requires a thoughtful approach that considers past experiences against current challenges in order to formulate the best plan for securing the nation and preserving the foundations of American jurisprudence. As history demonstrates, the FBI's role in the American story is replete with legendary successes and questionable moments, both borne out of good intentions to protect the American people. Remaining true to its core strength as an investigative law enforcement agency will ensure that the FBI continues to serve the American people in a manner that protects civil liberties while addressing the threats posed by criminals, terrorists, and spies.

**Conclusion:** The challenges of the 21st century require the FBI to evolve in a manner that continues its traditions of effective law enforcement and investigative acumen while it expands its intelligence capabilities and inter-agency collaborations. A historical review is a stark reminder that the FBI's past successes against the notorious criminals and national security threats of the last century were not the result of sweeping intelligence intrusions that threatened civil liberties, but rather the consequence of focused investigations by dedicated professionals.

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## *Preface*

During my 25 years of service as a Special Agent with the FBI, I have come to appreciate the important role we play in the security of our country and the manner in which we do our job. My experience has taught me the value of our operational structure, our special and unique jurisdictional mission, and most importantly, our dedicated men and women who work tirelessly to confront the many threats to our domestic tranquility. Studying my organization's history, particularly through periods of national crisis and turmoil, provided valuable insight into how the FBI evolved to become one of the most important agencies in our national security equation. Staffed with world-class investigators who maintain strict adherence to the rule of law has enabled the FBI to conduct its crime fighting business in a constitutionally acceptable manner. Understanding this aspect of the FBI's responsibilities is important given the challenges of the 21<sup>st</sup> century, particularly when some pundits have called for more domestic security operations that threaten civil liberties. Benjamin Franklin's belief that giving up liberty for security eventually results in the loss of both is an important principle that must not be lost in our national security discussions.

There have been many great FBI Agents who have guided me throughout my FBI career and for whom I am eternally grateful. I would like to particularly thank former FBI Assistant Director Kenneth Kaiser for taking the time to discuss matters relevant to this research, and his part in helping to break me in as a rookie agent in Detroit, many years ago. I would also like to cite Special Agents Arthur Radford Baker and Pete Gangel for their insights and guidance throughout this project. Supervisory Special Agent Baker accompanied me on many risky assignments back in Detroit, is a great friend, and continues to proudly serve the FBI in Washington, D.C., in our Congressional Affairs Office. Special Agent Gangel has remained a close friend and confidant since our days as New Agent Trainees at the FBI Academy, and continues to be a productive and outstanding field agent for the FBI. Both are wise and insightful professionals, indicative of the type of people who have honorably served the FBI. Special Agent Jim Melia of the FBI Richmond Division and Supervisory Special Agent Carl Benoit of the Legal Instruction Unit at the FBI Academy were also helpful in this endeavor and supported my effort with their expertise. They are great friends and I respect them both for their wisdom and dedication to the FBI mission. There are dozens of other great agents who I have had the honor of working with during my career and who have influenced me in so many positive ways. I hope my efforts represent them, and the FBI, well.

I would like to thank Dr. Pauletta Otis for her patience and tutelage through this academic challenge, and allowing me the freedom to pursue this topic. Her insights and support were invaluable.

Most importantly, I want to thank my family for their lifelong love and support in all of my pursuits. My father, a former FBI agent, (a Hoover agent, as they like to be called), was my inspiration to pursue a career in federal law enforcement and always available to offer a word of advice with the challenges of the job. A particular note of thanks goes to my sister, Pam Bartlett, the college professor who provided good ideas and counsel on organizing my thoughts and helping me through the process of preparing a graduate-level product.

## INTRODUCTION

This paper will examine the history of the Federal Bureau of Investigation (FBI) to provide perspective on the evolution of the FBI's current national security role, defend its pre-September 11<sup>th</sup> (9/11) posture, and offer a cautionary position that favors focused investigative missions over domestic intelligence operations. The Bureau's historical commitment to its law enforcement mission has established it as one of the finest investigative organizations in the world. The FBI has evolved during its 103 years of its existence and earned the public's trust as a defender of civil liberties. Historically, the FBI has served the country well by collecting evidence and intelligence necessary to disrupt and dismantle illicit networks and prosecute significant criminals. As the needs of the country have changed, so has the FBI. It has grown to meet new demands and continued to earn the respect as the top law enforcement agency in our country and even the world.

The events of 9/11 brought significant changes to many government agencies; the threat posed by terrorists was now a reality for the entire country. This threat had been brewing for decades and the FBI had already been actively involved in investigations to identify, apprehend, and prosecute terrorists. In fact, in any given year prior to 9/11, the FBI engaged in approximately two dozen full domestic terrorism investigations which were opened before a crime was committed, many of which resulted in the successful disruption and prosecution of subjects planning to commit violent acts.<sup>1</sup>

Testifying before the Joint Intelligence Committees (JICs) in 2002, former FBI Director Louis Freeh adroitly defended the FBI's pre-9/11 posture of "identification, investigation, and arrest of dangerous terrorists, and those who support them, as prevention". He cited the criminal investigation of the cell responsible for the 1993 World Trade Center bombing and how these



prosecutions thwarted future bomb plots to destroy New York City tunnels, buildings, and infrastructure that would have killed thousands. “FBI investigations after this bombing identified Ramsi Yousef as a responsible party and led to his arrest in Pakistan by FBI Agents. This prevented him from carrying out his next plot to blow up 11 U.S. airliners.”<sup>2</sup>

Following 9/11, significant changes were brought to the FBI in order to provide a more thorough government response to the international terrorism problem posed by al Qaeda and its affiliates; these threats were now visible to everyone. The changes to investigative techniques, intelligence gathering, and working with other intelligence gathering government agencies were now part of the new and powerful resources available to the FBI. With these changes and tools came the increased responsibilities of avoiding constitutional abuses.

Additionally, the post-9/11 changing priorities of the FBI, and federal law enforcement in general, impacted other significant crime fighting problems and opened new debates on the future role of the FBI. In 2007 William Bratton, Chief of the Los Angeles Police Department, observed the unintended consequences of the overwhelming shift of federal resources from fighting street crime and organized crime to terrorism, and the subsequent rise in violent crimes across the nation. Unwittingly, as law enforcement reacted to the aftermath of 9/11, and the United States’ federal dollars and priorities shifted, organized crime groups were able to exploit the reduction in law enforcement attention and moved aggressively to establish new trade routes and alliances.<sup>3</sup> A 2008 Bloomberg article by Patricia Hurtado characterized the FBI’s response to the recent subprime probes as a triage shift of resources from terror to fraud.<sup>4</sup> Yet another 2008 article on CNN.com describes a RAND study requested by Congress regarding the creation of a domestic intelligence agency. The story notes the FBI’s transformation from a primarily law enforcement mission to counterterrorism intelligence and prevention.<sup>5</sup>

Given the tone of these articles, several questions come to mind about the role of the FBI in the 21st century. Can the FBI be the nation's premier domestic national security agency and still perform its traditional law enforcement duties? Has the FBI entered a new era as a domestic spy, counterterrorism agency? Can the FBI balance its traditional crime fighting role with the responsibilities of national security?

Nearly ten years after 9/11, a reflection is warranted on the effects that this event has had on the FBI. The lessons learned from the past offer guidance for the future as the FBI meets the 21st century law enforcement and domestic national security challenges. Changing institutional structures may be warranted to meet changing societal, legal, or technological advancements, but the cultural foundations within the FBI, shaped by generations of professionals dedicated to the cause of justice and national security, should not be forsaken during periods of heightened national angst. This paper posits that not only should the FBI maintain its criminal investigative responsibilities at the same high level of past eras, but also that its law enforcement mission makes it a stronger and more constitutionally acceptable counterterrorism and domestic intelligence agency.

## **UNDERSTANDING THE LESSONS OF THE PAST AND THE FBI NATIONAL SECURITY ROLE**

Understanding the FBI's past and how it contributed to its modern day culture is important to the current discussion of how the FBI should serve the American public in the 21st century. Its culture is that of dedicated professionals who skillfully investigate the most challenging and complex crime problems, while respecting and preserving civil liberties. Furthermore, the FBI's ability to network across the spectrum of domestic and international law enforcement agencies is the envy of the free world. This section will review the FBI's historical

role in national security matters with an emphasis on those periods which led to re-evaluation of policies and planned change. In the years during and following World Wars I & II and the Cold War, the decisions were made to pursue subversives using all available means, and not always with the proper guidelines or legal authorities to prohibit abuses. The FBI's history is an important consideration when evaluating the proper balance between domestic intelligence gathering and the rule of law.

From 1918-1920, (just after World War I and in the early years of the FBI while it was still known as the 'Bureau of Investigations'), anarchists, terrorists, and the national crisis of pandemic flu threatened the nation's security. After dozens of bombings by anarchists, to include the home of the U.S. Attorney General Mitchell Palmer, Bureau agents launched a nationwide investigation, under the direction of a young Justice Department lawyer named J. Edgar Hoover.<sup>6</sup> The case led to the roundup of thousands of foreign nationals in what became known as the Palmer Raids. The effort was plagued by poor intelligence and lack of due process under the law, and would be roundly criticized by the next U.S. Attorney General, Harlan Fiske Stone.<sup>7</sup> Stone thereafter launched the first effort to control the FBI's investigations of political activities and described the bureau's actions during the previous decade as "lawless, with no statutory basis".<sup>8</sup>

By 1935, Hoover was now the FBI director and had reformed the agency from its early years, filled with patronage and incompetency, into a professional law enforcement organization. During this period the FBI professionalized its workforce, established a national crime laboratory and fingerprint identification repository, and acquired law enforcement authorities which allowed Special Agents to carry weapons and effect arrests.<sup>9</sup> The National Academy (NA) program was launched to provide world class law enforcement leadership training to state, local,

and eventually international law enforcement officials. Relationships forged by the NA program proved invaluable to the FBI's abilities to network across the greater law enforcement community, and is now considered the gold standard for law enforcement executive training around the world.<sup>10</sup>

The gangster era saw an expansion of the FBI's jurisdictional reach and ushered in the start of the FBI as the primary law enforcement arm of the Justice Department. As its federal law enforcement reach grew, so too did its national security mission. With the U.S. involvement in World War II looming, the FBI established a Special Intelligence Service (SIS) that operated from 1940 through April of 1947. Predating the Office of Strategic Services (OSS) and the Central Intelligence Agency (CIA), President Franklin Roosevelt ordered the creation of the SIS to fill the void in the nation's intelligence collection capability.<sup>11</sup>

The SIS operated mostly in the western hemisphere and focused its efforts against Nazi agents targeting the U.S. and its interests from Latin America.<sup>12</sup> Lacking adequate training and resources, the SIS nonetheless served the nation well through the war period. By 1946, it had identified 887 Axis spies, 281 propaganda agents, 222 agents smuggling strategic war materials, 30 saboteurs, and 97 other agents. Disbanded after the war, it was the forerunner to the CIA and set the stage for the establishment of the FBI's valuable overseas Legal Attaches (legats) program.<sup>13</sup> Currently there are over 60 FBI legats which provide worldwide coverage for investigative efforts, allowing the FBI to gather evidence from international sources, establish cooperative crime-fighting relationships with international partners, and reduce the number of safe harbors available to criminals fleeing U.S. justice.

The Cold War that followed World War II marked a new era of security concerns that led national leaders to more aggressive actions toward Communists and their sympathizers. As the

nation's primary federal law enforcement agency and guardian of domestic security, the FBI took the lead in collecting domestic intelligence for government leaders. The ensuing period, however, led to FBI constitutional abuses in the name of national security, via its program known as COINTELPRO (Counterintelligence Programs).<sup>14</sup> Lacking sufficient guidelines and oversight, the FBI spied on citizens and foreign nationals that it deemed sympathetic to political causes opposed by national leaders. Information gathered from these efforts was improperly used to smear reputations and disrupt activities, outside the scope of constitutionally acceptable practices.<sup>15</sup>

Fueling the COINTELPRO was the threat of communism and nuclear destruction which inspired presidents and Congressional leaders to create legislation, (such as the Anti-Communist Internal Security Act of 1950), enabling national leaders to expand and use the FBI powers to identify, disrupt, and neutralize the activities of "subversive" groups in the U.S. In spite of the FBI's good intentions to thwart dangerous groups in order to protect the national security and deter violence, the 1976 Senate committee chaired by Senator Frank Church, (later to be known as the Church Commission), was highly critical of the Bureau's activities in this regard, characterizing it as sophisticated vigilante operations aimed at preventing the exercise of First Amendment rights.<sup>16</sup> The more notorious FBI actions of this period included the investigation of famous people like Dr. Martin Luther King and John Lennon, warrantless surveillance techniques, and the misuse of FBI information by politicians.

At the Church Commission hearings, FBI Director Clarence Kelley testified that COINTELPRO represented only a small portion of the FBI work of that period. He attributed abuses to the turbulence and domestic violence of 1960's, and the lack of guidelines for FBI intelligence operations.<sup>17</sup> The criticisms of the FBI throughout the 1970's led the Justice

Department and the FBI to reform its domestic security operations and construct guidelines that included the FBI would only investigate radicals breaking the law or clearly engaging in violent activity. Additionally, and partly in response to the Church Commission, Congress enacted the Foreign Intelligence Surveillance Act (FISA) in 1978 which established rules for physical and electronic surveillance and the collection of foreign intelligence, and further created a special court for the approval of warrants.<sup>18</sup> Since its inception, FISA Court judges have demonstrated particular sensitivities to the protection of civil liberties, requiring Special Agents to apply the utmost diligence when seeking authorization for intrusive techniques, especially regarding U.S. citizens. Justice Department and internal FBI operational guidelines further addressed the issues at hand, creating additional administrative requirements to ensure FBI Headquarter oversight of FISA investigations.

In spite of these new guidelines and laws, another FBI investigative effort in the 1980s led to further Congressional criticisms and concerns for overreaches into constitutionally protected activities. The investigation to determine if the Committee in Solidarity with the People of El Salvador (CISPES) was a foreign agent or a terrorist group led to intrusions into constitutionally protected activities and further defined the FBI's future intelligence-gathering activities.

Authors David Cole and James Dempsey provide a thorough analysis of the CISPES case in their book, 'Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security'. According to Cole and Dempsey, interest in CISPES began as a result of the foreign policy shift by the Reagan administration toward western hemisphere threats posed by communist or leftist groups. Reagan's administration chose to support the military government of El Salvador against leftist rebels. The CISPES group, made up mostly of U.S. citizens,

opposed the administration, conducted protests, and provided humanitarian support to the political arms of the rebel groups in opposition of El Salvador's military government. An initial investigation by the FBI in 1981 determined that the CISPES was not a foreign agent, (and therefore not committing a crime by their activities), but the seeds of suspicion had been sewn and two years later the FBI opened an international terrorism case.<sup>19</sup>

By June of 1985 the nationwide investigation concluded after identifying 2,376 individuals and 1,330 groups involved in protected political activities.<sup>20</sup> The full scope of the CISPES investigation was not disclosed until 1988 when FBI Director William Sessions, called before Congress to testify on the case, described it as an aberration.<sup>21</sup> For many, however, the CISPES matter harkened back to the COINTELPRO period when the FBI was used by politicians to spy on groups that opposed U.S. policy, but otherwise committed no crimes.

Early in the CISPES investigation, the Reagan administration unsuccessfully proposed legislation making "support for terrorism" a crime, but was deterred by Congress mostly over First Amendment concerns.<sup>22</sup> Without statutory authority or viable criminal behavior to warrant further actions, the FBI's intelligence gathering activities on the CISPES amounted to a waste of resources and another criticism against the FBI's national security efforts. It would be a decade later before the political climate had shifted sufficiently to pass the 1996 Anti-terrorism Act which criminalized terrorism financing and expanded government powers in the investigation of terrorist groups and their supporters.<sup>23</sup> The 1993 World Trade Center attack by Islamic extremists and the 1995 bombing of the Murrah Federal Building in Oklahoma City by Timothy McVey were the catalysts for this legislative change.

The oversteps of the past led to restrictions and internal guidelines on FBI activities that in some cases overly limited its ability to pursue foreign operatives wishing to harm U.S.

interests. Legislative reforms, such as the Anti-terrorism Act of 1996 and the Patriot Act of 2001, eventually provided the tools for FBI Agents to lawfully expand their investigations into supporters of terrorist groups and the permissible techniques needed to pursue them. Prior to 9/11, an overly restrictive interpretation of the FISA law resulted in a Justice Department imposed firewall between FBI investigators of terrorism matters and FBI criminal investigators. It was not until 2002, in the hindsight of 9/11, that the FISA Court of Review tore down this barrier thereby allowing more FISA evidence in criminal prosecutions.<sup>24</sup>

In summary, this section identified the history and evolution of the FBI's national security responsibilities with a focus on FBI overreaches of the past and the need for proper oversight and legislative authorities. It outlined the delicate balance between domestic national security operations and protecting civil liberties, the latter of which must always be preserved. In every case, the questionable activities of the FBI were driven by the political climates of the times and not by a rogue agency that cared little for constitutional principles. Presidents and their attorney generals were well-aware of the FBI activities and endorsed or directed these intrusions for the perceived national security concerns of those periods. It is important to note when reviewing criticisms of past actions that the overwhelming success and contributions by the FBI have enabled it to evolve and improve its operations in a constitutionally acceptable manner. Furthermore, its historic leanings toward a law enforcement mission exposed to the light of the judicial system and a professional workforce have provided the foundations for adherence to the rule of law while addressing domestic security threats. The evolving missions and responsibilities of the FBI have enabled the U.S. to forego the need for a separate domestic spy agency that would potentially endanger civil liberties. These historical examples, however,



highlight the fragile balance between domestic intelligence collections and protecting civil liberties.

## **THE FBI'S PRE-9/11 COUNTERTERRORISM EFFORTS**

In his statement before the JIC, former Director Freeh stated that "it is inevitable that every act of terrorism cannot be prevented even under the best of circumstances. If reality was otherwise, some government, using unlimited resources and unrestrained power, would have come up with a 100% preventive formula"<sup>25</sup> This section will provide a brief historical perspective on the FBI pursuit of al Qaeda, and review the FBI's approach to the growing terrorism problem throughout the last quarter of the 20<sup>th</sup> century. Inasmuch as the mission of counterterrorism is the current top priority of the FBI, and the reason for an expanded intelligence-gathering apparatus, it is important to review the FBI's pre-9/11 efforts and understand the important role the FBI played in this aspect of national security. As it has done throughout its history, the FBI has applied the concepts of intelligence-gathering to identify and pursue members of criminal and terrorist organizations. It is nothing new to FBI operations, and as noted in the previous section, an area where FBI agents must find the right balance between pursuing planners of criminal acts and avoiding unnecessary infringement of civil liberties. Nonetheless, the pre-9/11 FBI used its tools and resources to make every attempt to identify and investigate terrorists. In so doing, it legally gathered evidence necessary to prosecute terrorists, and convincingly demonstrated to international partners the strength of the U.S. cases and the need for cooperation.

In 1975, a bomb exploded at the Washington, D.C. headquarters of the State Department. A domestic group known as the Weather Underground was responsible for this and other violent

acts against the government. An offshoot of student demonstrations of the 1960's and inspired by communist ideologies, the Weather Underground embraced crime and violence as a way to promote their anarchist agenda.<sup>26</sup> Dedicated FBI agents pursued this group using proven investigative techniques, intelligence gained from investigation, and informants. The formation of the first counterterrorism task force with the New York Police Department in the early 1980's brought the strength and resources of both agencies together to dismantle this domestic terrorist group.<sup>27</sup> This highly successful collaboration was the forerunner to the creation of FBI Joint Terrorism Task Forces (JTTFs) across the country.

As the global reach of criminal groups was expanding, the FBI also established stronger and greater collaborative efforts with international law enforcement agencies. By the mid-1980s a new age of international crime and terror was taking shape that required these expanded law enforcement relationships. In 1988, Libyan terrorists planted a suitcase with explosives on a jetliner, (Pan Am flight 103), departing London Heathrow Airport, resulting in the loss of 259 passengers, including 180 Americans, over Lockerbie, Scotland.<sup>28</sup> FBI investigators were dispatched to this immense crime scene and helped to piece together the evidence trail which led to the identification and prosecution of Libyan intelligence operatives. A future FBI director, Robert Mueller, was the chief U.S. prosecutor for this successful, multinational effort.<sup>29</sup> Pre-9/11, this attack resulted in the single largest loss of civilian lives that the U.S. had ever suffered at the hands of terrorists.<sup>30</sup> The FBI played a significant role in this investigation, helping British investigators piece together the evidence necessary to determine who was responsible for this attack.

It is noteworthy to point out that in April of 2004, in his testimony before the 9/11 Commission, FBI Director Robert Mueller referred to his experience with the Pan Am 103 case

in regards to his concerns about the reliability of intelligence on national policy. In particular, he described an intelligence briefing he received early on that directed blame toward a country other than Libya. "Had the U.S. government acted on that intelligence, before the evidence was collected and analyzed [by the FBI and British investigators] to determine the guilty party, substantial harm may have been done to the wrong country and U.S. credibility would have significantly suffered."<sup>31</sup>

During the late 1980s another group of Middle-eastern extremists was gaining strength and increasing animosity against the West. Inspired by their military success against the Soviet army in Afghanistan, thousands of mujahedeen fighters were ready to advance their Islamic cause around the world. Osama Bin Laden (OBL) became the leader of one such group, al Qaeda. By 1993, one of his well-trained operatives, Ramsi Yousef, had successfully planned and executed an attack on the World Trade Center (WTC), resulting in six deaths, thousands of injuries, and extensive damage.<sup>32</sup>

The FBI JTTF in New York had been tracking several of these extremists prior to the bombing, but had not uncovered the bombing plot in time to stop it. The investigation after the event uncovered vital pieces of evidence that led investigators to the cell that had conspired to commit this act of violence. The thorough investigation led to the conviction of four conspirators and the prevention of additional terrorist acts planned against New York landmarks. Yousef escaped and fled to Pakistan, but the task force continued pursuing him. In 1995 he was captured in Pakistan, along with another co-conspirator, and brought back to the U.S. where he was convicted of his crimes. Yousef's uncle, Khalid Sheikh Mohammed (KSM) later planned the 9/11 plot that finished the job that Yousef has set out to do in 1993.<sup>33</sup>

Director Freeh understood the gravity of the threat posed by al Qaeda and took a personal role in overseeing many of the operations taken to pursue this network. He hastened the creation of more legats worldwide, particularly in the Middle-east, and expanded the FBI's reach to the areas where al Qaeda operatives were hiding. The FBI had an ever-expanding worldwide presence and developed important collaborative partnerships against the threats posed by terrorism and organized crime groups. As Freeh testified before the 9/11 Commission in 2004,

“al Qaeda was at war with the U.S. before September 11, 2001. In addition to the 1993 WTC bombing, al Qaeda attacked U.S. embassies in Kenya and Tanzania in August of 1998. In December 1999, one of al Qaeda's soldiers, Ahmed Ressam, entered the U.S. to bomb Los Angeles airport. In October 2000, al Qaeda attacked the USS Cole in the port of Aden.”<sup>34</sup>

The international terrorism problem posed by Islamic extremists during the 1990's was clearly being pursued by a small, albeit limited, segment of the U.S. national security apparatus. Considering the post 9/11 criticisms of the FBI, that included calls for the creation of a separate domestic intelligence agency, it is important to understand the valuable role that the FBI played in this segment of national security and the constitutional risks posed by a separate domestic intelligence agency reporting to political leaders without judicial scrutiny. Freeh's oversight and direction was not lacking in the years before 9/11, nor was the commitment of FBI agents assigned to terrorism work. As Freeh noted in 2004 to the Wall Street Journal:

“Pre-9/11, the FBI used all the means at its disposal to capture bin Laden and to prevent future attacks against America. The FBI and CIA actively targeted al Qaeda and bin Laden beginning one year before the East Africa embassy attacks on August 7, 1998. Together, they were able to indict bin Laden prior to August 7 for a plot to murder U.S. soldiers in Yemen. In November 1998, he was indicted a second time for the embassy bombings and put on the FBI’s Top 10 list in April 1999. In 1999, a dedicated “bin Laden Unit” was established at FBIHQ and the CIA-FBI “bin Laden station” began to operate covertly on an international basis. Of course, our arrest warrants, by themselves, were pieces of paper. The U.S. armed forces provided a means to execute a warrant to the FBI and DEA in 1988 by invading Panama in order to allow agents to arrest Manuel Noriega. Similar means to capture bin Laden did not become available until October 2001, when Afghanistan was so successfully invaded by our forces.”<sup>35</sup>

Absent a declaration of war by U.S. political leaders against an enemy that was already committed to a war against the West, the FBI used its limited tools and resources to fight international terrorism and thwart plots wherever possible. This premise did not necessarily advocate providing Miranda warnings to captured battlefield combatants, but absent a war, the FBI did what it does best; make cases against criminals committing federal violations and bring them to justice under the American rule of law. Subjects arrested by FBI agents would be treated like any other defendants that it would apprehend for prosecution in U.S. federal courts. Neither before nor after 9/11 would FBI agents participate in the torture of captured terrorists, or any other practices outside acceptable actions under the law, else they would jeopardize the criminal cases against them.

By utilizing a focused investigative approach, applying every available legal resource, and collecting intelligence (from evidence and sources), the FBI identified dangerous individuals and groups, and aggressively pursued them within the limits of its authority both internationally and domestically. International support was further encouraged by the evidentiary proofs provided by the FBI that established the U.S. legal position. In much the same manner that successful organized crime investigations established the guilt of large networks of criminals, so too did the thorough and focused FBI terrorism investigations. In so doing, several Middle-east countries were convinced of the legitimacy of the U.S. cases and agreed to provide assistance.

In summary, it is clear that the FBI pursued a focused counterterrorism plan to address the terrorism problem posed by radical extremist groups like al Qaeda. Lacking the resources and the institutional culture to pursue broader intelligence gathering against ethnic, political, or religious groups in the domestic environment, the FBI followed the evidentiary trails to identify the networks seeking to harm the U.S. More importantly, by avoiding the constitutional risks of broader domestic intelligence collections, the FBI garnered the cooperation of the people who were positioned in the communities where terrorists resided, thereby collecting the evidence needed to identify real threats to national security.

### **BALANCING INTELLIGENCE-DRIVEN PREVENTION WITH DUE PROCESS AND THE RULE OF LAW**

Successful FBI agents understand the constitutional issues they are sworn to uphold and are guided by a desire to bring criminals to justice within the system of due process that Americans expect and value. Intelligence gathering, from various sources and technical surveillance methods, played a large role in the FBI's success during much of the 20<sup>th</sup> century, but has also challenged the agency to adhere to constitutional principles during times of

heightened national security threats. Throughout the history of the FBI, operational guidelines and legislation were created to address the issues that resulted from FBI operations that breached civil liberties. Because of this, the FBI evolved and became a stronger, more constitutionally acceptable law enforcement agency. Current FBI leadership must be wary of overemphasizing intelligence gathering in lieu of focused investigations of lawbreakers.

The magnitude of the events on 9/11 brought the terrorism problem, and the threat it posed to national security, to the forefront of discussions and debates concerning roles of the federal agencies that are responsible for national security. Domestically, the FBI has treated terrorism as a crime problem which required coordination and intelligence-sharing across the spectrum of cooperative law enforcement and national security agencies, including international partnerships. The FBI's unique authorities, abilities, and inter-agency connectedness enabled it to bridge the gaps between law enforcement efforts and intelligence agencies in a manner that developed the lawfully collected evidence necessary to bring the full weight of the U.S. criminal justice system to bear. Given the FBI's history and experience in law enforcement and national security matters, this strategy was appropriate and effective pre-9/11, but absent political will, was limited by guidelines, resources, and tools necessary to further engage international terrorist groups abroad and suspicious activities in the homeland.

The FBI culture of employing sophisticated investigative techniques and long term strategies to pursue the masterminds and ringleaders of organized crime and terrorist groups, rather than endless arrests of low-level players, has been another hallmark of its past success. In fact, often the low-level players are identified and persuaded to cooperate with the FBI in exchange for leniency in their own legal predicaments, thereby facilitating the efforts to secure charges against the more elusive leadership figures in a criminal organization. While working in

task force environments comprised of multiple federal, state, and local agencies, FBI agents typically lead the philosophy of pursuing ringleaders and their lieutenants by way of the powerful tools and authorities they bring to the group.

Experienced FBI agents also realize that the best intelligence is gleaned from the focused, patient, and diligent investigative efforts like those involved in the fight against organized crime. Utilizing powerful federal criminal statutes, such as the Racketeering and Influence of Corrupt Organizations Act (RICO) and Money Laundering, typically involves following tedious financial record trails and the use of sophisticated electronic surveillance techniques, undercover operations, and the development of cooperating witnesses. This allows the FBI to identify the leadership networks so that criminal organizations can be disrupted and ultimately dismantled. The recent arrests of 127 organized crime subjects in New York exemplifies this concept, and was the result of years of investigation into several mafia families.<sup>36</sup> Similarly, the FBI investigates terrorist groups with a goal of pursuing justice for all participants in the illegal enterprise, to include leadership elements. As Freeh noted in the Wall Street Journal, “the FBI is extremely effective in conducting interviews, and putting together both criminal and intelligence cases. Information obtained through law enforcement channels – whether testimony, documents, records, photographs, forensic evidence or the results of interviews – provides the purest form of intelligence.”<sup>37</sup>

In a recent interview with the author, recently retired FBI Assistant Director Ken Kaiser, recounted his own experiences dealing with outsiders who were critical, post-9/11, of the FBI’s law enforcement, case-driven culture. He recalled his reaction on one occasion to a group in which he defended the only FBI culture he knew over the course of a 26-year career, as “one of an outstanding investigative heritage defined by its dedicated and professional staff who



continually make sacrifices to gather the evidence and fact-based intelligence necessary to solve crimes and protect the people of the U.S.”<sup>38</sup>

Since 9/11, terrorists and their supporters have been effectively pursued and thwarted with sound investigative strategies similar to those applied to organized crime, narcotics traffickers, and gangs, without undue damage to civil liberties. Some national security pundits suggest the need for a wholly dedicated domestic intelligence agency for the U.S., like the British MI-5. Overreliance on massive domestic intelligence collections, however, on groups related to terrorists by ethnicity, national origin, political leanings, or religion in lieu of sound investigative strategies to collect evidence of wrongdoing has led to unproductive overreaches in the FBI’s past and will unnecessarily overburden or distract law enforcement from the pursuit of credible threats in the future. More importantly, Americans have rejected the idea of an agency that spies in the homeland as susceptible to political manipulation and dangerous to civil liberties. Special Agents pursuing violators of federal law and working closely with other law enforcement agencies tend to identify the best sources of information needed to pursue subjects engaged in, or planning to engage in, unlawful conduct, including terrorists. Ethnic communities where dangerous individuals or groups might originate or seek cover, must not fear the presence of FBI agents seeking information, but rather should view them as fair-minded professionals who desire only to bring justice to violators of law.

The FBI’s historical emphasis on criminal investigations, accountable to the scrutiny of the judicial system, has given the American public confidence in the FBI’s ability to balance its needs for intelligence with that of public fears of an over-intrusive government police force. The FBI must remain vigilant in its adherence to the rule of law, resist political manipulation under the guise of national security causes, and continue to focus on producing quality investigations

while adapting to the changing threat environment, all while protecting the civil liberties of the American people. Additionally, the FBI's post-9/11 increased focus on intelligence gathering must not distract its investigators from important investigative casework. The expanded corps of intelligence analysts and improved information-sharing networks, if properly developed and utilized within the FBI's culture, provide a much needed compliment to the FBI mission.

### **POST-9/11: REORGANIZING THE FBI AND CHANGING THE CULTURE**

Significant organizational changes have occurred in the FBI since 9/11. The FBI's historically case-driven law enforcement approach has been modified to an intelligence-driven approach with an emphasis on national security and prevention of terrorism. After nearly a decade of government review of the 9/11 gaps, the FBI has restructured its organization to address the political concerns for domestic intelligence collections and national security. As it has done in its past, the FBI has utilized its impressive reputation and professional workforce to address the domestic national security gaps, and added intelligence and analytical resources to strengthen its threat assessment capabilities. The Office of Intelligence, later to become the Directorate of Intelligence, was created within the FBI to lay the foundation for the expansion of its intelligence and analytical capabilities. Additionally, the number of JTTFs across the country tripled, to ensure every field office stood up a multi-agency team to address counterterrorism matters. These dramatic undertakings required resource shifts from traditional criminal programs and inevitably led to internal culture clashes, and some public criticisms, similar to those experienced during other periods of the FBI's history.

Within 45 days of the 9/11 attacks, Congress passed the Patriot Act providing additional tools for the FBI's new top priority work. The Patriot Act included new authorities that

strengthened the FBI's abilities to pursue terrorists, including the improved roving wiretap provisions addressing the legal issues inherent with the technology boom of cellular phones and Internet communications. The Patriot Act also provided expanded use of National Security Letters (NSLs) for evidentiary records. This provision allowed for the FBI to obtain records without court review and also included non-disclosure requirements on the individual or organization required to respond.<sup>39</sup>

With the newly stated counterterrorism priorities and armed with these powerful tools, FBI agents aggressively pursued leads in an effort to uncover the next terrorist plot. FBI Headquarters (FBIHQ) officials encouraged aggressive pursuit of all terrorism-related leads and the use of the all the tools available to resolve questionable activities. In order to ensure FBI field offices adhered to new national priorities and deployed resources accordingly, in 2002 Director Mueller established the following national rank order plan:

#### National Rank Order Plan

1. Protect the U.S. from terrorist attack
2. Protect the U.S. against foreign intelligence operations and espionage
3. Protect the U.S. against cyber-based attacks and high technology crimes
4. Combat public corruption at all levels
5. Protect civil rights
6. Combat transnational and national criminal organizations and enterprises
7. Combat major white-collar crime
8. Combat significant violent crime<sup>40</sup>

As resources shifted to the higher priority work, traditional criminal programs had to be reevaluated, with a focus on the major crime problems only. In a few years after 9/11, nearly 2,000 Special Agents were moved to the new higher priority programs of counterterrorism and counterintelligence, reducing the number of criminal program investigators across the country. Assistant Director Ken Kaiser (retired) acknowledged that the Criminal Investigative Division (CID) expanded the number of joint FBI/state/local law enforcement task forces from 249 to 441

in order to create a force multiplier of resources to address traditional criminal program gaps resulting from these resource shifts. Lower priority federal crimes, such as bank robbery and low level frauds, would no longer be pursued by FBI Agents.<sup>41</sup> Kaiser agreed with the author, however, that the experiences agents gained from working criminal investigations, such as interviewing/interrogation, source development, evidence collections, tactical actions associated with surveillances and arrests, testifying before grand juries, hearings, trials, and collaborations with federal prosecutors and other law enforcement agencies, were invaluable to developing the core strengths of the agent workforce.<sup>42</sup> The author contends that it is in this environment where newer FBI agents are indoctrinated with the experiences and skills that produce the core competencies that the FBI relies on for its continued success.

Five years after 9/11, the Justice Department's inspector general (DOJ-IG) reported to Congress that the FBI may have violated the law or government policies as many as 3,000 times. The DOJ-IG cited FBI widespread abuses of the National Security Letter (NSL) authority to secretly obtain telephone, bank, and credit card records of U.S. citizens and foreign nationals residing in the U.S. This report evoked heated criticism of the FBI from both Republicans and Democrats, and led to profuse apologies from the FBI's General Counsel. DOJ-IG Glenn Fine did not characterize the abuses as intentional criminality, but rather careless actions and incredibly sloppy practices, prompted by a desire to take shortcuts.<sup>43</sup> Reminiscent of past criticisms and overreaches, Representative James Sensenbrenner, Jr. (R – Wisconsin) expressed surprise at how widespread the use of NSLs had become, asking: "Do we have that many potential terrorists running around the country? If so, I'm really worried." He said the IG's report shows that "the FBI has had a gross overreach," and added that its officials "can't get

away with this and expect to maintain public support for the tools that they need to combat terrorism.”<sup>44</sup>

In yet another DOJ probe of alleged improper conduct by the FBI, IG Fine cited troubling FBI practices with regard to alleged counterterrorism matters during the period from September 11, 2001 to 2006. His findings noted that the FBI began investigations of people involved in activist groups on weak foundations and that specifically, on one occasion, at a 2002 antiwar event, an FBI agent was directed to attend to look for terrorism suspects without any evidence that these suspects would be present.<sup>45</sup> Fine’s report chastised the FBI for having weak rationale for some of its terrorism investigations, “investigating where there was little indication of federal crimes”, and “extending the duration of investigations on advocacy groups without adequate basis.”<sup>46</sup> Director Mueller was misled by subordinates into telling Congress, falsely, that surveillance of a peaceful 2002 anti-war rally was “an outgrowth of an FBI investigation” when in fact it was the product of an agent receiving a “make work” assignment on a “slow day”.<sup>47</sup>

In response to Fine’s latest findings, Justice Department and FBI officials noted that his report did not uncover a single instance where the FBI targeted any group or individual based on their exercise of First Amendment rights. Ken Wainstein, former head of the Justice Department’s National Security Division, said that the investigations of the groups cited in Fine’s report reflect the FBI’s post 9/11 challenge of transforming into an intelligence organization able to detect and dismantle terrorist plots.<sup>48</sup> In the years following 9/11, FBI officials were indeed seeking to fill the intelligence gaps that national leaders and pundits determined to be seriously lacking pre-9/11.

Typical of these criticisms are the views of Richard Posner, a judge on the U.S. Court of Appeals for the 7<sup>th</sup> Circuit. He believes the FISA is too restrictive and makes it difficult to

conduct surveillance of U.S. citizens and lawful permanent residents unless they are suspected of being involved in terrorist or other hostile activities. He points out how the Defense Department's National Security Agency (NSA) is conducting electronic surveillance of U.S. citizens outside of the FISA requirements in order to fill the domestic gaps to national security, and he is critical of the FBI's inability to transform itself into a domestic intelligence agency.<sup>49</sup> In another 2007 article in The Wall Street Journal, Judge Posner further criticized the Bureau as lacking the tradition, the skills, the patience, the incentive structures, the recruitment criteria, the training methods, and the career paths that national security intelligence requires.<sup>50</sup>

Responding to Judge Posner's reasoning in a 2007 Wall Street Journal article, former director Freeh stated:

"Americans have thoroughly rejected the notion of a national police force... Our federal law enforcement and security agencies have been given certain enumerated authorities designed to protect the country but not to amass excessive power in any one agency. Thus the CIA and FBI are given domestic and extraterritorial missions that are statutorily separated. The FBI, which has domestic law enforcement powers, is designed to be as transparent as possible in order to ensure that it protects the nation as well as the rights and liberties enshrined in the Constitution... Establishing in effect a secret police to monitor, collect and keep under observation those whom a nontransparent agency believes to be a threat to the republic is a dangerous and dumb idea."<sup>51</sup>

In 2005 the FBI established the National Security Branch (NSB) pursuant to the recommendation of the Commission on the Intelligence Capabilities of the U.S. Regarding

WMD, (The WMD Commission).<sup>52</sup> The NSB consists of the Counterintelligence Division, the Counterterrorism Division, the Director of Intelligence, and the Weapon of Mass Destruction Division. The NSB dominates the current mission priorities of the FBI. The Cyber Division occupies a top 3 priority status in the FBI mission, while the work of the Criminal Division is now considered a lower tiered priority. Nonetheless, the dedicated efforts of the criminal investigative agents continue to produce significant accomplishments, bringing justice to corrupt public officials, organized crime and gang subjects, and major white collar crime offenders.

In 2008 the FBI overhauled its operational guidelines in accordance with new Justice Department guidelines, to incorporate a new intelligence-driven paradigm and ensure FBI agents carefully pursued their casework in a constitutionally acceptable manner. This same year, the FBI's Training Division updated its curriculum to reflect these changes and introduced more collaborative concepts between agents and analysts so that future generations are unencumbered by cultural walls between the work of investigations and intelligence gathering.<sup>53</sup> Additionally, agents are now placed in career paths, according to job specialties, to ensure training and expertise is developed accordingly.<sup>54</sup> To fill the expertise gaps, the FBI has gone beyond the traditional recruiting fields of prior law enforcement, military, lawyers, and accountants, and sought professionals from many other diverse backgrounds, to include engineers, linguists, scientists, intelligence professionals, and computer scientists. These steps have further strengthened the diversity of talent within the FBI and continue its legacy of combining the skills of a highly educated workforce with the powerful tools of the federal justice system in order to achieve the FBI mission of protecting the American public.

It is important to note that since 9/11 the FBI has thwarted several al Qaeda-inspired terrorist plots, bringing numerous extremists to justice. Using good old fashioned police work,

the FBI pursued seven Portland international terrorists shortly after 9/11 on a lead from a sheriff acting on a tip. The ensuing investigation uncovered a cell that was training to attack U.S. troops in Afghanistan.<sup>55</sup> A 2003 case in Buffalo, known as the Lackawanna Six, involved six Americans of Yemeni decent who had trained with al Qaeda in Afghanistan during the summer of 2001, and were providing material support to them after 9/11. The investigation led to extensive intelligence gathered from these defendants who cooperated with the FBI and eventually pled guilty to their crimes.<sup>56</sup> Yet another plot disrupted by solid police work involved the 2007 arrest of six radical Islamists for their plot to kill U.S. Army soldiers at Fort Dix in New Jersey. Each was convicted for charges that included conspiracy to commit murder of U.S. military personnel, with four of the defendants receiving life sentences.<sup>57</sup> By employing focused investigations against subjects with intent to do harm, the FBI has succeeded in doing its part to prevent numerous terrorist plots by international terrorists.

## **SUMMARY AND CONCLUSIONS**

The FBI has shown throughout its history that it adapts and changes based on the needs of the country while maintaining its strong investigative principles and core respect for the rule of law. The FBI's response to the national emergency of 9/11 demonstrated its ability to adjust to the needs of the country by shifting resources to the priority national threat and preventing numerous terrorist plots. Additionally, a greater U.S. response to al Qaeda abroad is largely responsible for changing the playing field in this war, while the FBI's changed priorities and fortified counterterrorism posture has further strengthened the domestic security.

The FBI has expanded its intelligence capabilities and forged improved relationships and collaborations with the intelligence community. With the establishment of Field Intelligence



Groups (FIGs) in every field office, the creation of the NSB, and new intelligence-based performance metrics for Special Agents, the FBI has dramatically shifted to an intelligence-driven approach to investigations focused on prevention of future violence.<sup>58</sup> In doing so, it assumes a challenging role that requires operational restraint in order to avoid constitutional abuses.

As the FBI has shifted to national security priorities and increased domestic intelligence operations, it has diminished its legacy law enforcement work that created the formidable national (and international) network of crime fighters. Agents continue to address international crime and important public corruption problems, but with fewer resources than in years past. Greater emphasis has been placed on intelligence collections and reporting than on the case-driven accomplishments of identifying and convicting violators of federal law. As it has done in its past, the FBI must re-balance its priorities to ensure that it remains a vital component in the total domestic security equation. History has demonstrated that criminal threats continually shift, requiring well-prepared and agile federal, state, and local resources to secure the homeland. Doing more with less is not sustainable on the criminal investigative side of the FBI house. The FBI must continue to stay engaged in the fight against significant criminal organizations, international crime syndicates, cyber criminals, public corruption, civil rights abuses, and violent crime posed by gangs, kidnapers, child predators, and major white collar criminals. With the help of the FBI, a dynamic counterterrorism structure is now in place; it is time for the FBI to refocus its efforts toward major crime problems, and for Congress to provide the necessary support for this cause.

The FBI has demonstrated the ability to adjust its resources to address priority national crime problems by maintaining a professional and dedicated workforce, and close working

relationships with the U.S. Attorneys Offices nationwide. However, because of congressionally controlled funding, there is limited flexibility to quickly shift resources according to changing threat environments. Former FBI director Freeh cites this arrangement as a limiting factor that prevents the FBI, and other national security agencies, from quickly responding to the rapidly changing threats faced by America's intelligence agencies, crime fighters, and lead counterterrorism forces.<sup>59</sup> Freeh suggests that Congress restructure the budget process to allow the FBI director and the attorney general greater authority to determine their own allocation of funding and resources as missions evolve and new threats emerge.<sup>60</sup> He compares the flexibility needed for the FBI to the genius of American industry which is able to adjust to economic conditions for future business success.

FBI field leadership must cultivate, maintain, and embrace the important relationships with the U.S. Attorneys Offices nationwide, by developing strategies to address the major crime problems in particular regions. This field-based leadership model has worked in the past and ~~should be employed to allow greater discretionary authority to pursue the most significant~~ regional threats in accordance with national priorities. For instance, if a particular region has little or no connection to terrorist groups, but significant crime from gangs and narcotics trafficking, resources should be coordinated and deployed to deal with the real threats to that region. In so doing, the FBI maintains the important relationships with other federal, state, and local law enforcement agencies needed to build the trust that is crucial in the national security equation. The FBI's history clearly demonstrates that the threats posed by crime, terrorism, and spies are constantly shifting and changing in priority, requiring organizational agility and professional experience for operational success.

FBI field leaders, known as Special Agents in Charge, should be given discretionary authority to utilize resources to address top crime or national security threats in their area of responsibility, and thereafter be held accountable to their results. Current boilerplate FBIHQ priorities do not effectively use limited resources, but rather enable the construction of counterterrorism empires, regardless of the nature of the threats posed in any given region. The newly established FIGs should prepare comprehensive threat assessments based on a holistic approach to analyzing the crime problems and terrorist threats in a region, not HQ-driven directives that lead to wasted efforts and overreaches. These recommendations do not warrant the elimination of the newly erected nationwide counterterrorism apparatus, but rather suggest a more balanced approach to the deployment of FBI resources.

In their work titled 'Terrorism and the Constitution', authors David Cole and James Dempsey recommend an intelligence collection strategy focused on analysis of information about a criminal enterprise (or terrorist group), because it allows the government to identify the silent partners, such as those who provide money for violent acts or the leaders who give the commands.<sup>61</sup> In 2006, Harvey Rishikof, a former FBI legal counsel to Freeh and renowned authority on the FBI, suggested that "the elaborate and enviable legal and bureaucratic structures that were created to protect and guarantee privacy have become impediments to prosecuting and preventing terrorist acts."<sup>62</sup> Many of Rishikof's ideas (2006) for restructuring the FBI and maintaining accountability have since come to pass.

In Louis Freeh's memoir of his experience as director of the FBI, he acknowledges the oftentimes slow and messy process of applying the law to deal with the most violent and unrestrained of enemies. He states that "the uniquely American formula that underlies the rule of law can never guarantee that we'll make no mistakes along the way, but abiding by the rule of

law will always ensure that we succeed in the end and that we do so honorably.”<sup>63</sup> A balanced FBI that remains focused on its core investigative strategies, avoids the sway toward a secret police force, and seeks to bring significant criminals, terrorists, and spies to justice under the watchful eye of the American judicial system will always serve the best interests of the nation.

As this paper demonstrates, during times of national angst, the FBI’s focus on investigations of violations of federal law, rather than wholesale domestic intelligence collections borne out of public fears and political manipulation, has historically served the country well against threats foreign and domestic, while preserving the rule of law. In a complicated world with ever-expanding technology reaches, the American judicial system stands out as a beacon of fairness and due process under the law, uncompromised by secret police and militarily enforced law that endangers civil liberties. The FBI serves this system well, has learned from its past mistakes, and otherwise filled the important domestic national security role of bringing dangerous criminals, terrorists, and spies to justice. Going forward in the 21<sup>st</sup> century, no other U.S. agency is better suited with professionalism, experience, and adherence to the rule of law to continue to fulfill this important aspect of national security, while addressing the significant national crime problems that emerge. Nonetheless, history has shown that guidelines and laws must be established and followed, with oversight by the American judicial process to ensure the protection of civil liberties. Harvey Rishikof provides an instructive note in his piece, ‘The Role of the FBI in National Security’, as follows: “For in the war of ideas, the war that is the terrorist’s final terrain, we will have defeated ourselves if accountability is not maintained.”<sup>64</sup>

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- <sup>32</sup> Office of Public Affairs, Federal Bureau of Investigation, p. 95
- <sup>33</sup> Office of Public Affairs, Federal Bureau of Investigation, p. 95
- <sup>34</sup> Freeh, Louis J, "Before 9/11 - - and After", The Wall Street Journal, New York, N.Y., April 12, 2004, p. A.18
- <sup>35</sup> Freeh, Louis J, "Before 9/11 - - and After", The Wall Street Journal, New York, N.Y., April 12, 2004, p. A.18
- <sup>36</sup> Lengel, Allan, "127 Busted in Largest mafia Roundup in FBI History", January 20, 2011, as taken from <http://www.tickletthewire.com/2011/01/20/127-busted-in-largest-mafia-roundup-in-fbi-history/>

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<sup>37</sup> Freeh, Louis J, "The FBI Did Its Best", p. A.22

<sup>38</sup> Kenneth Kaiser, retired Assistant Director of the FBI's Criminal Division (2009) was interviewed by the author on January 6, 2011. Special Agent Kaiser had a distinguished 26 year career with the FBI, where he served in Detroit and New Orleans Divisions, ASAC of Indianapolis, SAC of New Orleans and Boston, AD of Inspection Division, SAC of the post-Hurricane Katrina federal security force, and other priority assignments, before finishing his career at the highest position in the Criminal Division at FBIHQ.

<sup>39</sup> Highlights of the USA Patriot Act as noted on the Department of Justice website at <http://www.justice.gov/archive/ll/highlights.htm>

<sup>40</sup> The FBI national priorities are known to every Special Agent pursuant to Director Mueller's order in 2002, and listed on the FBI's website at the following address: <http://www.fbi.gov/about-us/investigate>

<sup>41</sup> Kaiser interview, January 6, 2011

<sup>42</sup> Kaiser interview, January 6, 2011

<sup>43</sup> Smith, R. Jeffrey, "FBI Violations May Number 3,000, Official Says", The Washington Post, March 21, 2007, [http://www.washingtonpost.com/wp-dyn/content/article/2007/03/20/AR2007032000921\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/03/20/AR2007032000921_pf.html)

<sup>44</sup> Ibid

<sup>45</sup> Markon, Jerry, "FBI Probes were improper, Justice says", The Washington Post, September 20, 2010, [http://www.washingtonpost.com/wp-dyn/content/article/2010/09/20/AR2010092003100\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/09/20/AR2010092003100_pf.html)

<sup>46</sup> Editorial Staff, "Red-baiting, circa 2002-2006", The Boston Globe, September 22, 2010, [http://www.boston.com/bostonglobe/editorial\\_opinion/editorials/articles/2010/09/22/red\\_baiting\\_circa\\_2002\\_2006?mode=PF](http://www.boston.com/bostonglobe/editorial_opinion/editorials/articles/2010/09/22/red_baiting_circa_2002_2006?mode=PF)

<sup>47</sup> Ibid

<sup>48</sup> Markon, Jerry, "FBI Probes were improper, Justice says", The Washington Post, September 20, 2010, [http://www.washingtonpost.com/wp-dyn/content/article/2010/09/20/AR2010092003100\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/09/20/AR2010092003100_pf.html)

<sup>49</sup> Posner, Richard A., "Our Domestic Intelligence Crisis", The Washington Post, December 21, 2005, [http://www.washingtonpost.com/wp-dyn/content/article/2005/12/20/AR2005122001053\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/12/20/AR2005122001053_pf.html)

<sup>50</sup> Posner, Richard A., "Time to Rethink the FBI", The Wall Street Journal, March 19, 2007, <http://proquest.umi.co/pqdweb?did=1237175051&sid=1&Fmt=3&clientId=30164&RQT=309&VName=PQD>

<sup>51</sup> Freeh, Louis J, "Former FBI Director Says U.S. Doesn't Need a National Police Force", The Wall Street Journal, March 31, 2007, <http://online.wsj.com/article/SB117529284571255075.html>

<sup>52</sup> FBI Memorandum dated September 12, 2005 regarding the establishment of the National Security Branch

<sup>53</sup> During the period from 2007-2009 the author served as the Chief of the FBI's New Agents Training Unit. Per Director Mueller's mandate, the New Agent Training curriculum was transformed to reflect the FBI's intelligence-driven priorities and incorporate collaborative exercises with FBI intelligence analysts.

<sup>54</sup> Career paths for FBI Special Agents include counterterrorism, counterintelligence, cyber, and criminal program assignments. In 2008, a fieldwide designation plan was implemented to place agents into a designated career path. From that point forward, agents received their career path designation while attending their New Agents Training, based on their pre-employment backgrounds and the needs of the various FBI divisions.

<sup>55</sup> Office of Public Affairs, Federal Bureau of Investigation, p. 114-115

<sup>56</sup> Office of Public Affairs, Federal Bureau of Investigation, p. 114-115

<sup>57</sup> Office of Public Affairs, Federal Bureau of Investigation, p. 114-115

<sup>58</sup> Each FBI field office now has a Field Intelligence Group (FIG) comprised of Intelligence Analysts and Special Agents who are responsible for collecting, analyzing, and reporting intelligence on all FBI programs. Prior to their creation, the FBI used analysts mostly for case-related organizational charts, spreadsheets, and analysis, rather than for general threat assessments and reporting outside of the FBI.

<sup>59</sup> Freeh, Louis J., "My FBI", New York, St. Martin's Press, (2005), p. 306

<sup>60</sup> Freeh, Louis J., "My FBI", New York, St. Martin's Press, (2005), p. 306

<sup>61</sup> Cole, David, p. 184

<sup>62</sup> Rishikof, Harvey, "The Role of the Federal Bureau of Investigation in National Security", Chapter 9, p. 138, of George, Roger Z., and Kline, Robert D., "Intelligence and the National Security Strategist", Lanham, MD, Rowan & Littlefield Publishers, Inc., 2006

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<sup>63</sup> Freeh, Louis J., "My FBI", New York, St. Martin's Press, (2005), p. 314

<sup>64</sup> Rishikof, Harvey, p. 141

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